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Counsel for Kasian Franks

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE:

SEEQPOD, INC.
DEBTOR.

Case No. 09-52226-RLE-11

Hon. Roger L. Effremsky

**DECLARATION OF GREGORY
CHARLES IN OPPOSITION TO
MOTION FOR DISCOVERY
SANCTIONS**

Date: September 29, 2010

Time:

Ctrm: 3099

280 South First Street
San Jose, CA 95113-3099

Judge: Hon. Roger L. Efremsky

I, Gregory J. Charles, declare and say:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California. I am a partner in the law firm of Campeau Goodsell Smith which is counsel for Excel Innovations, Inc. ("Excel"), plaintiff in these proceedings. This declaration is made on my personal knowledge. If called as a witness, I would and could competently testify as follows.

2. Campeau Goodsell Smith ("CGS") is counsel for the debtor in this proceeding, and did not undertake representation of Mr. Franks until June 28, 2010

3. I hereby authenticate each exhibit attached hereto as a true and correct

1 copy of the original document.

2 4. Attached hereto as Exhibit 1 is correspondence from opposing counsel
3 dated February 15, 2010.

4 5. Attached hereto as Exhibit 2 are portions of the transcript from the
5 hearing dated March 24, 2010.

6 6. Attached hereto as Exhibit 3 are a series of emails that I either received or
7 sent.

8 7. Attached hereto as Exhibit 4 are portions of Mr. Franks 2004 examination.

9 8. Attached hereto as Exhibit 5 are portions of the Mimvi 10Q for the quarter
10 ending March 31, 2010.

11 I declare under penalty of perjury under the laws of the United States of America
12 that the foregoing is true and correct.

13 Executed this 15th day of September, 2010 at San Jose, California.

14
15 s/Gregory J. Charles

16 GREGORY J. CHARLES
17
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27
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Exhibit 1

MUNGER, TOLLES & OLSON LLP

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February 15, 2010

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VIA EMAIL AND U.S. MAIL

Gregory J. Charles, Esq.
Campeau Goodsell Smith
440 N. 1st Street, Suite 100
San Jose, CA 95122

Re: In re SeeqPod, Inc.

Dear Mr. Charles:

This letter follows up our prior communications regarding the production of documents by, and deposition of, Mr. Kasian Franks pursuant the Rule 2004 examination authorized by the San Jose Bankruptcy Court.

As you are aware, Mr. Franks' 2004 examination was initially set by court order for August 28, 2009, with a production of documents due on August 3, 2009. Due to Mr. Franks failure to produce documents timely, we were forced to postpone Mr. Franks' deposition. Pursuant to communications with you in September 2009, we understood that you would propose dates for the deposition and would produce documents that month. At your request, we also secured entry of a stipulated order that extends the protective order in the adversary proceeding to the 2004 examination. Despite these accommodations, no documents have been produced and no dates have been proposed for the deposition of Mr. Franks.

Continued non-compliance with the 2004 examination order and subpoena is unacceptable. Recent press reports indicate that Mr. Franks intends to launch a new internet music venture called "Mimvi" that apparently relies on the same technology that SeeqPod used.

WRITER'S DIRECT LINE
(415) 512-4019
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Blanca.Young@mto.com

Gregory Charles, Esq.

February 15, 2010

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Had we known of Mr. Franks' apparent plan to use intellectual property of the SeeqPod estate to launch a copy-cat infringing music service, we would have continued to persist in our demands to take his 2004 examination. As it was, we were led by the Trustee to believe that a sale of SeeqPod's assets in bankruptcy was forthcoming and that a deposition of Mr. Franks would not further our client's interests or the interests of the estate. Now it has become clear that a 2004 deposition is necessary to ascertain whether Mr. Franks is improperly using assets of the SeeqPod estate in violation of the automatic stay, in a manner that would impede or diminish the trustee's ability to sell estate assets, and/or as a consequence of a fraudulent or otherwise avoidable transfer.

Accordingly, it is imperative that the 2004 examination proceed. We hereby request that (1) responsive documents be produced no later than Monday, March 1, 2010 as directed in the subpoena; and (2) by no later than Friday, February 19, you propose dates during the last two weeks of March 2010 when Mr. Franks will appear for his deposition.

If we do not receive this information, we will raise this matter with Judge Effremsky at the status conference in the adversary proceeding scheduled for 10:30 am on March 4, 2010. Also, we reserve our rights to seek appropriate sanctions for Mr. Franks' continued non-compliance with court-ordered discovery.

We are available to meet and confer at your convenience if you wish to discuss these matters further.

Sincerely,


Blanca Young

cc: Frank Scibilia, Esq. (by email)
Seth Goldman, Esq. (by email)

Exhibit 2

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE ROGER L. EFREMSKY, JUDGE

In Re:) Case No. 09-52226-RLE (7)
SEEQPOD, INC.,)
Debtor.) WARNER BROS. RECORDS'
) MOTION to COMPEL
) EXAMINATION under
) BANKRUPTCY RULE 2004
)
)
) Wednesday, March 24, 2010
) San Jose, California

Appearances via telephone:

For the Movant/
Creditor: Frank P. Scibilia, Esq.
Jeffer Mangels Butler & Marmaro LLP
Two Embarcadero Center, Fifth Floor
San Francisco, California 94111-3824

Seth Goldman, Esq.
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105-2907

For the Debtor: Gregory Charles, Esq.

Digital Court
Recorder: United States Bankruptcy Court
Clerk of the Court
Peggy Sung
280 South First Street, Room 3035
San Jose, California 95113
(408) 278-7583

Certified Electronic
Transcriber: Palmer Reporting Services
1948 Diamond Oak Way
Manteca, California 95336-9124

Proceedings recorded by digital recording;
transcript produced by federally-approved transcription service.

1 THE COURT: Middle of May, really?

2 MR. CHARLES: Yes.

3 THE COURT: All right. Well, you can send this
4 message to Mr. Franks from Judge Efremsky: I'm not playing
5 games with him any longer. We will go about, I will basically
6 deal with this today, but he has a very cavalier attitude and
7 it's going to cost him financially. And I'm prepared to take
8 some other drastic measures and I may need the assistance of the
9 District Court, which if I make specific findings of facts and
10 conclusions of law and the request that the District Court issue
11 an appropriate order that will call for a U.S. Marshal to go out
12 and arrest him if he needs to appear at an examination, but it's
13 certainly going to happen well in advance of May.

14 And I don't care how important he thinks he is, this
15 is a federal court and he needs to adhere to the processes. So
16 I would appreciate it if you would communicate that to him in
17 writing.

18 Now with that being said, Mr. Charles, do you have any
19 suggestions to move this along in an expeditious matter to get
20 your client's attention other than doing that type of a letter
21 to him?

22 MR. CHARLES: Again, he's not my client, Your Honor,
23 but I will adhere to the Court's wishes that you – that I
24 communicate that to him –

25 THE COURT: Okay. Well, he's your responsible

1 individual and so unless you have somebody else you're
2 communicating, he's it. And I realize you don't personally
3 represent him, but I need someone to try to get ahold of him as
4 counsel.

5 And, again, I'm not trying to put you on the hot seat,
6 but obviously this gentleman doesn't get it -

7 MR. CHARLES: No, I've agreed to do that, Your Honor.
8 I've agreed to do that. I would suggest that - you know, wait.
9 You know, Your Honor, they could propose some dates, but -

10 THE COURT: I think what they're going to do is I'm
11 going to give a date and he better be there, is what needs to be
12 done. This is not - I'm not - we're not in a negotiation phase
13 anymore -

14 MR. CHARLES: No, I understand that, Your Honor.
15 But -

16 THE COURT: I'm not mad at you, Mr. Charles. What I'm
17 just simply saying is that this isn't an issue of proposing
18 dates. The gig's up.

19 MR. CHARLES: Well, I understand that, Your Honor.
20 But in fairness to Mr. Franks, he was not served with a copy of
21 this motion. This matter sat in abeyance for well over six
22 months. This is a case in Chapter 7 right now. I don't know
23 that counsel for the trustee wants to take this examination and
24 - and I don't necessarily agree that he has this cavalier
25 attitude. I mean this case has been on the backburner forever

1 and – and nothing was done until I got a call where I
2 specifically said that I was not Mr. Franks' lawyer, and you say
3 he's the responsible person, I understand that, but we've got a
4 Chapter 7 trustee. And the Chapter 7 trustee has no interest in
5 taking Mr. Franks' examination with respect to this issue.

6 So I don't know that he's being cavalier and I don't
7 know that – that all these things are happening, but I'm willing
8 to try to facilitate this. But I don't necessarily agree with
9 the characterization of what's happening.

10 THE COURT: All right. Well, okay, –

11 MR. CHARLES: I mean this case has sat dead in the
12 water.

13 THE COURT: All right. Mr. Charles, that's fine.
14 Thank you.

15 Mr. Goldman and Mr. Scibilia, you've done this
16 vis-a-vis a 2004 examination, and there's an adversary action on
17 file. Perhaps what it would be best to do would be to notice
18 his deposition and a production of documents as to him
19 individually. And then there's no issue about him, whether he's
20 a responsible individual. He's not the debtor, because I think
21 as a responsible individual, I don't know if I can exercise my
22 rights to have a U.S. Marshal go out and get him. I don't – I
23 have not had an opportunity to look at that issue.

24 But – and I'm not taking sides whether your side's
25 correct, Mr. Franks is correct. My point is simply I don't get

1 the impression that Mr. Franks is taking these proceedings
2 seriously. And I do – I'm sorry, Mr. Charles, but I think he is
3 taking a very cavalier approach to this.

4 So, Mr. Goldman and Mr. Scibilia, wouldn't it be
5 better to actually notice – serve him with a deposition notice
6 and a production of documents, and deal with it in that way
7 within these proceedings of the adversary action?

8 MR. GOLDMAN: Excuse me. Well, let me say a couple of
9 things in response to that, Your Honor. The one is that we have
10 served a subpoena pursuant to Rule 45, pursuant to the order
11 approving the Rule 2004 examination. And it's directed towards
12 things that relate to the administration of the estate, which is
13 the purpose of the examination.

14 And back in June when this first came up we understood
15 that the trustee was not inclined to proceed further to examine
16 Mr. Franks. And we were invited to – to make a motion under
17 Rule 2004 to get that information in aid of primarily the
18 administration of the bankruptcy estate.

19 THE COURT: Um-hum.

20 MR. GOLDMAN: The adversary proceeding is stayed. And
21 I'm not sure that the trustee is willing to sort of unstay that
22 for the purpose of issuing a subpoena, but if that's the
23 Court's –

24 THE COURT: Well, here's – here's my point. I can
25 appreciate where the trustee's counsel doesn't want to spend

1 time or money in this thing. But what I'm really getting from
2 your — from your clients is they're very concerned about what
3 he's doing with not just from the assets of the estate, because
4 there's probably not going to be that much money into the estate
5 here. You're concerned about him opening up another company
6 that's going to have the same effect that you guys — you all
7 complained about against SeeqPod. And maybe what needs to be
8 done is to proceed with the litigation and do away with the stay
9 of the litigation and take his deposition, do a request for
10 production of documents, and proceed with that route.

11 Then I don't have to have a problem, where I don't
12 have an actual — I can exercise additional powers that I have if
13 you go after him individually. But that's my suggestion on
14 this. Unless you have some other thoughts on here, but you're —
15 we're not — we obviously don't —

16 MR. GOLDMAN: Well, —

17 THE COURT: — have Mr. Franks' attention on this.

18 MR. GOLDMAN: Right. Well, I guess I would say that
19 Franks is not a defendant in the — in the adversary proceeding.

20 THE COURT: Maybe —

21 MR. GOLDMAN: And —

22 THE COURT: — he needs to be a defendant in another,
23 maybe not an action pending in the Bankruptcy Court, maybe he —
24 if you've got issues with him, maybe it's another action,
25 whether it be in state court or federal court, I don't know.

1 But I've got a trustee. I assume if it was documents you want
2 to review, I would assume the trustee has those documents with
3 trustee's - you know, counsel for trust - or with the trustee's
4 counsel, that, you know, Barry Milgrom has those documents. If
5 not, I guess my question would be why not.

6 Maybe you can shed some light for the Court. What is
7 it that you want from Mr. Franks that the trustee doesn't have?

8 MR. GOLDMAN: Well, I think we with like to understand
9 his dealings with the estate, if he has any property and if he's
10 using it currently. And I think we would like to understand
11 what impact, if any, Mr. Franks' conduct may have on a sale of
12 the - excuse me - a sale of the assets.

13 You know, we had hoped that we would not need to go
14 forward with this examination because we understood from the
15 trustee that a sale might be pending back in the fall. And so
16 we sort of held off. I mean we didn't want to be in this
17 situation, to force the Court to take action if we didn't need
18 to. But the recent events that we noted in the motion to compel
19 suggest that it would be appropriate to go forward with the
20 examination.

21 And I would like to reiterate that, you know, Mr.
22 Franks has not provided a single date. He's never proposed a
23 single date to us for his deposition. And it may be that he has
24 no documents. And if that's the case it will be easy for him to
25 comply with that aspect of the 2004 examination.

1 THE COURT: Have you spoken with Mr. Milgrom about
2 what documents that he has or has he requested documents from
3 Mr. Franks and not received those or from Mr. Charles, counsel
4 for SeeqPod?

5 MR. GOLDMAN: I — as I understand it, Mr. Milgrom has
6 received the documents that he has requested, but I don't know
7 in detail how much he has requested.

8 THE COURT: Wouldn't it be appropriate that if you
9 could see what he's requested, what he's received, you might get
10 the documents you're looking for as well as what Mr. Charles
11 has, just make a request of Mr. Charles?

12 I don't — Mr. Charles, do you have any documents of
13 SeeqPod in your possession?

14 MR. CHARLES: The documents were turned — I do not
15 personally have documents in my possession. The only documents
16 that came into my possession, Your Honor, were those relating to
17 the adversary proceeding. All other documents that we had went
18 to Mr. Milgrom. And it's my understanding that Mr. Franks
19 provided everything that he had to Mr. Milgrom and actually
20 worked with Mr. Milgrom on — on the proposed sale.

21 I also note that I believe that Mr. Milgrom had taken
22 the position that to the extent that the movants were seeking
23 documents relating to the estate, that they should run that by
24 Mr. Milgrom first as opposed to going directly to Mr. Franks.
25 And I don't know whether that was done or not.

1 THE COURT: I don't know. And it would seem to be
2 logical to me that if documents have been produced to the
3 trustee's counsel that, Mr. Goldman, someone would have made a
4 request on Mr. Milgrom to provide copies of those documents so
5 that you could review them and find out if he has, in fact,
6 said, 'Give me all your documents,' and have some sort of
7 certification to that effect, that he has all the documents,
8 rather than trying to trace Mr. Franks around.

9 I don't like what Mr. Franks is doing. I get the
10 impression he's just ignoring everybody. And I know you have
11 attempted to try to set up dates to take his deposition or his
12 examination – do an examination of him. But maybe it's –

13 MR. GOLDMAN: He –

14 THE COURT: – going to take doing away with the stay
15 of the litigation and notice his deposition in the adversary
16 action. I realize he's not a party, he's not a named defendant,
17 but you can certainly take his deposition there. And maybe
18 that's more appropriate. And maybe that will get his attention.
19 To the extent he's communicating with Mr. Milgrom, that if the
20 trustee realizes they're going to have to spend some time and
21 money dealing with that aspect of it, maybe that's the
22 appropriate way. But I'm not convinced that doing a 2004
23 examination, asking him to produce documents if, in fact, he's
24 produced everything already to Mr. Milgrom, you might be able to
25 get exactly what you want from Mr. Milgrom, especially since you

1 haven't asked Mr. Milgrom yet.

2 MR. SCIBILIA: This is Frank Scibilia, Your Honor.
3 May I raise a couple of points?

4 THE COURT: Please.

5 MR. SCIBILIA: I'm certainly – I have no objection to
6 asking Mr. Milgrom, you know, for particular documents, but sort
7 of the history of this is that – one of the things we're dealing
8 with here is not really so much the – the infringement that
9 occurred that's the subject of the adversary proceeding, but
10 what Mr. Franks has been doing or claims in public documents to
11 be doing with assets of the estate.

12 And I have raised – you know, first we learned that
13 the estate that he was going to be selling, you know, the
14 SeeqPod domain name, which was quite surprising to us because we
15 thought that belonged to the estate, and we raised the issue
16 with the trustee. The trustee informed us that that had
17 actually been, you know, fraudulently transferred to an entity
18 called Geneva Research, which was not disclosed in Mr. Franks'
19 statement to the Court regarding the assets, okay.

20 So then – and the trustee said, you know, 'So we have
21 no' – the trustee had no control over that domain name anymore,
22 okay.

23 Then I raised that issue with the District Court in
24 New York, because we actually had – the EMI plaintiffs actually
25 had a complaint on file not only against SeeqPod but against Mr.

1 Franks personally in the Southern District of New York.

2 And I raised – and what happened was there was a stay
3 of course against SeeqPod, but there was actually a motion to
4 dismiss on behalf of Mr. Franks. And when the motion was
5 pending, I raised this issue with the federal court in a
6 declaration and said, you know, Mr. Franks is basically the
7 primary actor here. He – he's running around selling these
8 assets that he says he doesn't control. They actually are in
9 the custody of him, and he denied that in a statement to the
10 federal court.

11 In a sworn declaration he said: Oh, no, the SeeqPod
12 domain name is actually under the control of the trustee, which,
13 you know, was completely at odds with what the trustee had told
14 us. And, as a result of that, you know, the motion, the case
15 against him was dismissed, okay. And we just haven't, you know,
16 decided to pursue that any further with him in New York because,
17 you know, we can't even find him in this adversary proceeding.

18 So – so he's really – you know, the issues here, he's
19 saying one thing to the trustee and he's saying something else
20 to the Southern District of New York. And all of this relates
21 not so much to the infringement that occurred but to what he is
22 doing.

23 And the control of the domain name is very important
24 because changes continue to be made to the website, and they
25 shouldn't be. And the trustee says, 'I have no idea, I'm not

1 making the changes.' So somebody must be making the changes.
2 And those changes are linking to other infringing websites and,
3 presumably, eventually will infringe to his new website.

4 So, you know, I'm not sure exactly whether or not
5 pursuing him in the adversary proceeding is really – in a
6 deposition the topics won't necessarily relate to the prior –
7 the prior infringement, or I guess they will touch upon that.
8 But they're sort of separate topics.

9 THE COURT: Well, then what about bringing a motion to
10 lift the stay, making a motion to – or not a motion, because I
11 don't think anybody's responded, but amending the adversary
12 action to not only deal with past infringement but potentially
13 present and future infringements and just proceed with it?

14 Because what I'm – what I'm really hearing is you're
15 concerned about infringement in the past, present, potentially
16 in the future that adversely affects your client's artists, your
17 clients as the record producers, and that he's apparently got
18 himself out of the action in the Southern District of New York
19 District Court. You say he's filed a document there that
20 contradicts what he told Mr. Milgrom. I assume you've provided
21 that document to Mr. Milgrom, saying that to the extent you
22 didn't have control over the SeeqPod domain name, he's filed a
23 declaration with the Southern District of New York District
24 Court saying just the opposite, that it is in fact under your
25 control. I'd be curious to see, like to know what the trustee's

1 doing.

2 But I think this is all about infringement, whether in
3 the past, present, or into the future. And if Mr. Milgrom's
4 trying to sell this it may be, you know, that he's very
5 sensitive about the money that's going to be expended because if
6 he knows he can't get that much money, he doesn't want to spend
7 a lot of time because it kind of defeats the whole purpose, and
8 again I'm sympathetic to that. But, on the other hand, you've
9 got a guy out there who apparently he's not cooperating here
10 with the Court and he's going on. You have concerns. And I
11 don't know what he's doing. I don't know with NIMBY, if it - if
12 it's utilizing the technology that was involved in SeeqPod, I
13 don't know.

14 But, Mr. Goldman, Mr. Scibilia, tell me, you know,
15 give me something. Check with the trustee, see what documents
16 he has. If it's just looking at documents and he's got
17 everything you need, that might solve the problem. You don't
18 need to take his - do an examination of him.

19 On the other hand, it sounds like what you really want
20 to find out is what the heck is he doing now with this new
21 company and that he may be potentially infringing upon your
22 client's artists as well as the record companies.

23 Am I missing something?

24 MR. GOLDMAN: No. Well, this is Seth Goldman. I
25 think that that's right to a large degree, but I think there are

1 a couple of other aspects. The one is to the extent to which
2 he's using a state property and in particular the extent to
3 which this could impact a sale.

4 I mean as a creditor of the estate we are still
5 interested in facilitating a sale of the assets for the highest
6 value. And, you know, -

7 THE COURT: But, Mr. Goldman, I have to say I'm not
8 buying that. I don't see as your real concern because the
9 amount of money that I'm led to believe is involved here is
10 peanuts. And if the trustee's counsel is not all worked up
11 about it, for - to have counsel for the record companies coming
12 in and saying, 'We're really concerned, we want to see the
13 estate maximize the assets,' I'm not buying it.

14 I think the real issue here is infringement. And I'm
15 sympathetic to it. I want - you know, -

16 MR. GOLDMAN: Can I also make one other suggestion,
17 Your Honor?

18 THE COURT: Yes.

19 MR. GOLDMAN: That is that under Rule 2005 the Court
20 has the power to order the debtor, which is defined in Rule
21 9001, includes, I believe, responsible individuals to comply
22 with Rule 2004 examinations. And we would be willing to go
23 through the trustee for documents, provided that a deposition
24 date is set and we have the ability to depose Mr. Franks. And
25 if documents are not available or become necessary following

1 that examination, then we could discuss with the Court how best
2 to proceed to get those documents.

3 THE COURT: Okay. Here's my suggestion. Mr. Charles,
4 if you'd be kind enough to write that letter to Mr. Franks, and
5 again I appreciate the fact that you don't represent him. He is
6 the responsible individual, but let him know –

7 MR. CHARLES: I will be, Your Honor. And I also just
8 want to note for the record that I don't have authority to do
9 anything in the Chapter 7 case, but since as an officer – since
10 you've directed me to do it, I will do it.

11 THE COURT: Just say that Judge Efremsky's made that
12 request and if you could – even if it's just let to him know
13 that he needs to appear in this Court or to cooperate in having
14 his examination, and that the Judge is not inclined to put this
15 thing out to May. That's one. So if you could be kind enough
16 to send him a letter to that effect, the Court would be greatly
17 appreciative of that.

18 Two, –

19 MR. CHARLES: I will do that, Your Honor.

20 THE COURT: – Mr. Goldman and Mr. Scibilia, my
21 suggestion is contact Mr. Milgrom, ask him to provide you with
22 copies of the documents that he has received. I would hope that
23 you would be able to make copies at your expense, but all
24 documents so that you could review. Review them, assuming he
25 can produce them immediately.

1 And then what we can do is I can give you a – I'll put
2 this over a few weeks and we'll take it up at that juncture and
3 possibly the interim. Maybe Mr. Franks will contact you and
4 make arrangements. But at that point I can take it up and see
5 if I want to issue a further order. But you have my attention
6 as to what's going on here. I'm just trying to figure out the
7 most efficient way to skin this cat.

8 Do you have any other thoughts, because what I'm – my
9 question would be how much time do you need. I can put this
10 over – I could put this over to April 14th.

11 MR. GOLDMAN: That – that would be fine for us, I
12 think.

13 Frank, do you agree?

14 MR. SCIBILIA: Definitely.

15 THE COURT: Okay. So I'm going to continue this
16 hearing to the 14th at 10:30. In the interim contact Mr.
17 Milgrom.

18 MR. CHARLES: Keep in mind, Your Honor, I am – I am on
19 vacation that week, and so to the extent you want me to
20 participate I am – I will be out of town.

21 THE COURT: Is this Mr. Charles?

22 MR. CHARLES: It is, Your Honor.

23 THE COURT: All right. Now that's – you were kind
24 enough to take the Court's call. I appreciate it. So I'm not
25 looking for you to appear. You don't represent him. And so if

1 you're kind enough just to send that letter, that will be
2 sufficient. So thank you.

3 MR. CHARLES: And I will pass that onto Mr. Franks.

4 THE COURT: Very good.

5 And I would suggest to counsel for the movants to send
6 out a notice of continued hearing to the 14th of April at 10:30.
7 Contact Mr. Milgrom in the interim. See if you can arrange
8 those and then you can discuss with Mr. Milgrom and that Judge
9 Efremsky is – will consider lifting the stay on the litigation
10 so that you can go forward and notice the deposition.

11 I'm also going to take a look at the issue of whether
12 the 2004 examination is the appropriate method here versus a
13 deposition. Again, my concern is I really see to be an
14 infringement issue for you and it might – I think the deposition
15 might be the appropriate way to go, but I'm going to take a look
16 at that. And I'll be prepared to deal with this on the 14th of
17 April.

18 Gentlemen, anything else that you can – you want the
19 Court to consider?

20 MR. GOLDMAN: No, Your Honor. Thank you.

21 MR. SCIBILIA: No, Your Honor. Thank you very much.

22 THE COURT: All right. Thank you.

23 MR. CHARLES: Thank you, Your Honor.

24 (The hearing was concluded at 11:58 o'clock a.m.)

25 –o0o–

State of California)
) SS.
County of San Joaquin)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber through the American Association of Electronic Reporters and Transcribers, Certificate No. 00124. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.

Susan Palmer
Palmer Reporting Services

Dated April 8, 2010

Exhibit 3

IRS CIRCULAR 230 NOTICE: Any tax advice given herein (and in any attachments) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any matter or transaction addressed herein.

From: Scibilia, Frank P. [mailto:FScibilia@PRYORCASHMAN.com]
Sent: Friday, April 09, 2010 2:50 PM
To: 'Greg Charles'
Cc: Young, Blanca; 'Goldman, Seth'; Levy Jr., Richard; Zakarin, Donald S.
Subject: RE: Kasian Franks

Thanks, Greg. I do not believe we served any papers on you since the last hearing.

Since you did, in fact, communicate with Mr. Franks, did he tell you whether he will be attending the April 14 hearing, either alone or with counsel? Is it fair to assume from your e-mail that Mr. Franks proposed no dates earlier than the second week of May, even though the Court found objectionable his reluctance to appear sooner? Did he propose any specific dates "after the 2nd week of May?"

Frank P. Scibilia | PRYOR CASHMAN LLP
7 Times Square | New York, New York 10036-6569
Direct Dial: (212) 326-0445 | Direct Fax: (212) 798-6375 | Cell: (917) 885-7001
fscibilia@pryorcashman.com | www.pryorcashman.com

From: Greg Charles [mailto:gcharles@campeaulaw.com]
Sent: Friday, April 09, 2010 5:41 PM
To: Scibilia, Frank P.
Subject: RE: Kasian Franks

Frank

Sorry for the delay. I have communicated with Mr. Franks but have not been retained by him. In this regard, I note that serving motion papers upon me is completely ineffective for any issue that you may have with Mr. Franks. As the Court asked, however, I am willing to facilitate this process. As I noted at the original hearing on this matter, Mr. Franks is still willing to be deposed after the 2nd week of May.

Gregory J. Charles, Esq.
CAMPEAU GOODSSELL SMITH, LC
440 North 1st Street, Ste. 100
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Mobile: 408.493.0363
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Greg Charles

From: Greg Charles [gcharles@campeaulaw.com]
Sent: Friday, April 09, 2010 3:41 PM
To: 'Scibilia, Frank P.'
Subject: RE: Kasian Franks

I'll be glad to help out.

From: Scibilia, Frank P. [mailto:FScibilia@PRYORCASHMAN.com]
Sent: Friday, April 09, 2010 3:30 PM
To: 'Greg Charles'
Subject: RE: Kasian Franks

Thanks, Greg. If we choose to accept that offer, can we coordinate the exact date through you?

Frank P. Scibilia | PRYOR CASHMAN LLP
7 Times Square | New York, New York 10036-6569
Direct Dial: (212) 326-0445 | Direct Fax: (212) 798-6375 | Cell: (917) 885-7001
fscibilia@pryorcashman.com | www.pryorcashman.com

From: Greg Charles [mailto:gcharles@campeaulaw.com]
Sent: Friday, April 09, 2010 6:27 PM
To: Scibilia, Frank P.
Subject: RE: Kasian Franks

Frank:

Seth actually served the revised notice of hearing on me electronically on March 24, so I wanted to make my position clear. I have spoken to Mr. Franks and simply conveyed his offer to you. I have no further specifics.

Gregory J. Charles, Esq.
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Exhibit 4

0217

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4

5 In re) CASE NO.: 09-52226-RLE-7

6 SEEQPOD, INC.)

7 Debtor.)

8

9

10

11

12

13

14

15 VOLUME III

16 VIDEOTAPED 2004 EXAMINATION OF KASIAN FRANKS

17 PAGES 217 THROUGH 322

18 SAN FRANCISCO, CALIFORNIA

19 JUNE 30, 2010

20

21

22

23

24

25 REPORTED BY: MICHAEL CUNDY, CSR 12271

0260

1 somewhere?

2 A Correct.

3 Q And what website is that?

4 A Mimvi.com.

5 Q How is Mimvi funded?

6 A Investors.

7 Q Are those private investors?

8 A Private and public.

9 Q Is it traded on a stock exchange?

10 A It will be.

11 Q It's not currently traded on a stock exchange?

12 A Let me correct that. It is traded on the stock
13 exchange but not trading.

14 Q So have you done SEC registrations and things like
15 that for Mimvi then?

16 A Correct.

17 Q And I take it there's been no IPO as of yet?

18 A There has been what's called an alternative IPO.

19 Q Okay. When did that happen?

20 A That process happened during a matter of months
21 from January to March.

22 Q And very briefly, what does that -- what does an
23 alternative IPO involve?

24 A It involves acquiring a publicly traded company
25 and changing out its operations, changing its name.

0275

1 A That's up to Apple and Google.

2 Q And how do you mean?

3 A It's how Apple and Google negotiate with their

4 application developers, whether or not the app is free.

5 It's largely up to the app developer and Apple.

6 Q So would you be finding applications that are

7 available on Google or Apple's websites?

8 A No, on the -- applications that are available on

9 Google's phone, like the Nexus 1 or the Android phones or

10 the iPhone or iPad.

11 Q So has Mimvi put in place anything to make sure

12 that whoever came up with the application is compensated

13 for it?

14 A That's Apple's job. That's not Mimvi's job.

15 Mimvi provides a search interface for these apps,

16 and what that means is if an app developer develops a

17 mobile app, they submit it to the Apple approval process.

18 And once that happens, Apple's the one that takes

19 a 30-percent revenue cut from that mobile app developer.

20 The developer takes the rest.

21 Q Have you -- has Mimvi engaged in discussions with

22 Apple and Google?

23 A No, but we do intend to open a dialogue with

24 Apple.

25 Q And in the interim, is Mimvi doing anything to

0276

1 ensure that Apple gets compensation for the mobile apps
2 that it developed that Mimvi is going to help people find?

3 A Apple gets 30 percent from any app developer that
4 develops an app that's available on the iPhone.

5 Q And -- so would Apple and the developer get paid
6 for the content that Mimvi is going to be locating for
7 people?

8 A No. The app developer will either choose to give
9 away their app for free or the app developer will sell
10 their app, and so if an app developer sells its app, Apple
11 makes money and the app developer makes money.

12 Q And you are simply linking people to wherever that
13 app exists; right?

14 A Correct.

15 Q So if that app had been stolen by somebody, Mimvi
16 would still link to the stolen app?

17 A That's incorrect.

18 Q Okay.

19 A Apple provides us -- Apple provides the world with
20 a database of mobile apps, and so does Google.

21 Mimvi enables people to search through those
22 databases.

23 Q Okay. Does Mimvi use any filtering to make sure
24 that it's not linking people to apps that have been stolen?

25 A We've never found an app that has been stolen.

1 That actually doesn't fit the context of the mobile app
2 market. Nobody can steal a mobile app.

3 Q Okay. And can you explain that to me briefly?

4 A Yeah. So if -- if an app developer develops an
5 app, they submit it to Apple, and Apple looks at it and
6 says, Okay, I'm going to put it in my app store.

7 And then people with iPhones, for this example,
8 would go to the Apple iPhone apps store and then download
9 the app, either pay for it or they would receive it for
10 free, so in that process, no one is stealing any mobile
11 apps.

12 So once you download a mobile app to your phone,
13 it's from Apple to your phone directly, so there's no way
14 anybody can really steal a mobile app.

15 Q So is Mimvi offering its own app store, basically?

16 A No. We're just offering a search interface to
17 help people find apps. That's it.

18 Q So if -- if someone were to search using Mimvi,
19 would they be redirected to the Apple app store?

20 A Absolutely, yes.

21 Q And that's where they could purchase the app?

22 A Yeah, exactly.

23 Q Okay.

24 A And we could, you know, provide a demo or
25 screenshots, if you want, on how that might work.

Exhibit 5

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended: March 31, 2010

Or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 333-153826



MIMVI, INC.

(Exact name of registrant as specified in its charter)

FASHION NET, INC.

(Former Name If Applicable)

Nevada

(State or other jurisdiction of incorporation or organization)

26-0685980

(I.R.S. Employer Identification No.)

222 Columbus Ave, Suite 410,

San Francisco, CA

(Address of principal executive offices)

94133

(Zip Code)

510-552-2811

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**Forward-Looking Statements**

This Quarterly Report contains forward-looking statements about the Company's business, financial condition and prospects that reflect management's assumptions and beliefs based on information currently available. We can give no assurance that the expectations indicated by such forward-looking statements will be realized. If any of our management's assumptions should prove incorrect, or if any of the risks and uncertainties underlying such expectations should materialize, the Company's actual results may differ materially from those indicated by the forward-looking statements.

The key factors that are not within our control and that may have a direct bearing on operating results include, but are not limited to, acceptance of our services, our ability to expand our customer base, managements' ability to raise capital in the future, the retention of key employees and changes in the regulation of our industry.

There may be other risks and circumstances that management may be unable to predict. When used in this Quarterly Report, words such as, "*believes*," "*expects*," "*intends*," "*plans*," "*anticipates*," "*estimates*" and similar expressions are intended to identify forward-looking statements, although there may be certain forward-looking statements not accompanied by such expressions.

Management's Discussion and Analysis and Results of Operation

We were incorporated in Nevada on August 7, 2007. We are a development stage company and have not yet realized any revenues since our formation. Mimvi is a technology company that develops advanced algorithms and technology for personalized search, recommendation and discovery services to the consumer and enterprise. Mobile applications are the new "websites" and mobile devices are the new "browsers". Our technology excels at helping people search for and find personalized mobile apps such as iPhone apps, Google Android apps, Windows Mobile apps, Symbian apps and many others.

A multi-billion dollar revenue difference exists that favors leading search engines over leading social networks. Our business combines the value of search engines and social networks to provide the world's largest personalized search and recommendation engine for mobile applications and videos.

We have developed cognitive computing technology which is the basis for its personalized search and recommendation platform. This technology mimics the way humans' process information. Using this technology to analyze information, searches on search engines and similar tastes found on social networks around the world, our business provides powerful personalized search, discovery, recommendation algorithms and additional technology platforms. This technology is currently applied to automatically organize the world's mobile apps and videos for consumers and enterprises such as Google, Apple, Baidu, NetFlix and Amazon.

While standard search algorithms require a lot of active work on the users part, our cognitive computing algorithms are designed to automate the search, discovery and recommendation process with personalization technology. This works especially well when users want to passively, similar to watching TV, interact with content on the Internet or within the enterprise.

Our technology platforms enable addictive and exhilarating consumer web experiences. These consumer web experiences are defined by simplicity and power. The world's general social networks and search engines have commoditized information making it ripe for the application of our technology. The value in this information comes from it being intelligently organized.

Our strategists understand that consumers need services that simplify their daily routines as opposed to making them more complex. This strategy wrapped around a platinum class of advanced search algorithms and technology provides relevant search results without having to actively search for apps, entertainment and product recommendations. Powerful automated discoveries add to a higher quality of life that can inspire and be shared with family and friends. By achieving this, the Company's product becomes a part of the consumer's daily lives.

In the three months ended March 31, 2010, we incurred a net loss in the amount of \$8,493, classified as general and administrative expenses. During the comparable period ended March 31, 2009, our net loss totaled \$500 in general and administrative expenses. Our net loss in the current period ended March 31, 2010 was higher than in the prior year due primarily to consulting fees. Since our inception, aggregate expenses were \$41,732, consisting of \$10,000 in executive compensation paid to a former